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OFFICE OF PETITIONS

In re Application of
Fumio Mieda
Application No.: 10/700,214
Filed: November 3, 2003
Attorney Docket No: KORG.002AUS

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: ON PETITION
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This is in response to the petition under 37 CFR 1.137(b) filed September 26, 2006.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to the Notice to File Missing Parts of Non-provisional Application mailed February 1, 2004. The notice set a shortened period for reply of two-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). A response was not received within the allowable period and the application became abandoned on April 2, 2004. A Notice of Abandonment was mailed on November 26, 2004.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of item (1) above.

As to item (1) above, the Notice to File Missing Parts of Non-provisional Application required a properly executed oath or declaration to be filed along with payment of the surcharge of \$65.00 for the late filing of the same. The instant petition was accompanied by the executed declaration and petition fee of \$750.00, but the surcharge of \$65.00 was not found with the petition. A copy of a check in the amount of \$65.00 as filed with the petition is noted, but the payment of \$65.00 was not made of record on the subject application of the date the petition was reviewed by the undersigned. The renewed petition must be accompanied by payment of the surcharge in the amount of \$65.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions
Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile:

(571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
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Office of Petitions